

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

METROPCS PENNSYLVANIA, LLC, a Delaware
corporation,

Plaintiff,

v.

CITY WIRELESS, INC., a Pennsylvania
corporation; AIMEN ARRAK; and ADEL
ALAMERI,

Defendants.

Case No.

**COMPLAINT FOR
INJUNCTIVE RELIEF**

Plaintiff MetroPCS Pennsylvania, LLC (“MetroPCS”) brings this action against
Defendants City Wireless, Inc. (“City Wireless”), Aimen Arrak and Adel Alameri for injunctive
relief and states as follows:

I. INTRODUCTION

This is an action for a permanent injunction to prevent Defendants City Wireless, Aimen
Arrak and Adel Alameri; City Wireless’s owners, shareholders, members, officers, partners, and
directors (“Affiliated Persons”) and any entity in which an Affiliated Person owns an interest
 (“Affiliated Entity”); City Wireless’s principals, officers, directors, employees, agents, and any
successor entity; and all persons acting in concert with or in active participation with them, from
violating the non-competition and non-solicitation clauses in City Wireless’s Exclusive Indirect
Dealer Agreement (“Dealer Agreement”) with MetroPCS. In the Dealer Agreement it was

1 agreed, among other things, that City Wireless would not sell wireless services in competition
 2 with MetroPCS or solicit, divert, or attempt to divert MetroPCS's customers for a period of six
 3 months following termination of the agreement, within two miles of any of the storefronts in
 4 which it had operated as a MetroPCS dealer. Although most claims arising under the Dealer
 5 Agreement are subject to arbitration, pursuant to Paragraph 21.5 of the Dealer Agreement, the
 6 parties agreed that "MetroPCS will have the right, in a court of law or equity, to . . . apply for
 7 injunctive relief against any act which would violate any of its provisions."

8 **II. PARTIES**

9 1. Plaintiff MetroPCS is a Delaware limited liability company with its principal
 10 place of business in Bellevue, Washington.

11 2. Defendant City Wireless is a Pennsylvania corporation with its principal place of
 12 business in Philadelphia, Pennsylvania. It was incorporated in Pennsylvania on October 13,
 13 2004.

14 3. Defendant Aimen Arrak is a citizen of Pennsylvania. He is listed as Vice
 15 President of City Wireless on the current Pennsylvania Department of State Business Entity
 16 page.

17 4. Defendant Adel Alameri is a citizen of Pennsylvania. He is listed as President of
 18 City Wireless on the current Pennsylvania Department of State Business Entity page.

19 **III. JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because
 21 there is diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of
 22 interest and costs. Jurisdiction also exists under the Court's general equity powers.

23 6. Venue is proper in this Court pursuant to Paragraph 21.5 of the Dealer Agreement
 24 (which provides that any action relating specifically to an injunction may be brought in any court
 25 of law or equity) and Paragraph 21.1 of the Dealer Agreement (which provides that exclusive
 26 venue shall be in King County, Washington).
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IV. GENERAL ALLEGATIONS

7. MetroPCS is a wireless telephone carrier with a national network and brand. It sells wireless personal communications services to its customers, including wireless voice communications, wireless internet services, ringtones, SMS texting, instant messaging, and other wireless phone and data services.

8. Unlike many other wireless carriers, MetroPCS focuses on offering “unlimited” pay-in-advance plans (often characterized as “prepaid”) without a long term contract. MetroPCS relies on its dealers to market and sell MetroPCS-packaged mobile wireless telephones, data modems, and accessories to users of MetroPCS’s service and to provide customer service. Dealers become the face that MetroPCS shows to its customers and they are trusted by MetroPCS to provide quality service to assist and retain those customers.

9. Defendant City Wireless executed the Exclusive Indirect Dealer Agreement (“Dealer Agreement”) at issue on or about February 13, 2014. Defendant Arrak signed that Agreement on behalf of City Wireless.

10. In late 2014, City Wireless breached the Dealer Agreement.

11. As a result of City Wireless’s breach of the Dealer Agreement, MetroPCS terminated that Agreement by letter dated December 17, 2014, and sent a revised termination letter on January 30, 2015, with an effective date 10 days following City Wireless’s receipt of the letter. The letter was received by City Wireless on February 10, 2015, making the termination date February 20, 2015.

12. Pursuant to Paragraph 2.4 of the Dealer Agreement, City Wireless agreed that it would not solicit or divert MetroPCS customers during the term of the Dealer Agreement and for six month following termination. That paragraph reads as follows:

All customers are owned by MetroPCS and not by Dealer. During the term of this Agreement and for a period of six (6) months after termination of this Agreement (whether voluntary or involuntary, with or without cause), Dealer, its principals, owners, partners, members, shareholders, officers, directors, employees, agents (“Affiliated Persons”) and any entity in which an Affiliated Person owns an interest and/or any successor entity

1 to Dealer (Affiliated Entity”) shall not at any time (i) request any
 2 MetroPCS customer to curtail or cancel its business with MetroPCS, or (ii)
 3 otherwise solicit, divert or attempt to divert any such MetroPCS customer
 4 from patronizing MetroPCS.

5 13. The Dealer Agreement also contains a six-month non-competition period after
 6 termination or expiration of the agreement. Paragraph 16.7 provides as follows:

7 Dealer covenants and agrees that during the Term of this Agreement and
 8 for a period of at least six (6) months following any termination or
 9 expiration of this Agreement, Dealers shall not, and will cause its
 10 Affiliated Persons and Affiliated Entities, not to directly or indirectly
 11 (including by licensing) engage or participate in, or acquire, manage,
 12 operate, control or participate in the management, operation or control of,
 13 either alone or jointly, any entity that engages in the sale, resale or
 14 distribution of any wireless telephone or wireless internet data service
 15 including, without limitation, any other wireless phone, or wireless
 16 internet service, or service plan that offers unlimited local and/or long
 17 distance calls and/or unlimited wireless internet service for a flat price,
 18 within a two (2) mile radius of Dealer’s MetroPCS Storefront Locations.
 19 If Dealer breaches this warranty and covenant, then, in addition to any
 20 other legal or equitable remedy that MetroPCS may have, the post-
 21 termination of this warranty covenant will be extended for one (1) day for
 22 each day during which the Dealer’s breach was ongoing.

23 14. The Dealer Agreement also contains a choice of law provision by which the
 24 parties agreed that, “This Agreement will be governed by the law of the State of Washington
 25 without reference to its conflict of law rules, and will to the maximum extent practicable, be
 26 deemed to call for performance in King County, Washington.” *Id.*, ¶ 21.1. This choice of law
 27 clause is valid and enforceable as to the claims herein. *See CH2O, Inc. v. Bernier*, 2011 U.S.
 Dist. LEXIS 42025; 2011 WL 1485604 (W.D. Wash. 2011); *Amazon.com, Inc. v. Powers*, 2012 U.S.
 Dist. LEXIS 182831 (W.D. Wash. 2012).

15. On March 30, 2015, MetroPCS learned that that City Wireless’s one remaining
 store was still open. In violation of the Dealer Agreement, City Wireless is selling competing
 wireless telephone and wireless internet data services for Boost Mobile from this location. Boost
 Mobile is a competing pay-in-advance wireless provider.

1 16. Defendants' actions in selling competing wireless telephone and wireless internet
2 data services from Defendants' former MetroPCS store location within six months of termination
3 of the Dealer Agreement constitute violations of the Dealer Agreement, including the non-
4 competition and non-solicitation provisions.

5 17. MetroPCS has suffered and will continue to suffer substantial and irreparable
6 harm as a result of Defendants' violations of the Dealer Agreement, for which no adequate
7 remedy at law exists. Among other harm, MetroPCS will suffer a loss of goodwill and continued
8 erosion of its customer relationships unless Defendants are enjoined.

9 **V. FIRST CAUSE OF ACTION**
10 **(INJUNCTIVE RELIEF)**

11 18. MetroPCS re-alleges each and every allegation in paragraphs 1 through 17 as
12 though fully set forth herein.

13 19. In violation of the Dealer Agreement, Defendants are selling wireless telephone
14 and wireless internet data services of competing wireless carriers at their one remaining
15 MetroPCS store and are soliciting, diverting, and attempting to divert MetroPCS customers to
16 other commercial wireless telephone carriers.

17 20. MetroPCS has no adequate remedy at law to redress the injuries caused by this
18 breach and it will continue to suffer substantial and irreparable harm—including loss of goodwill
19 and diversion of its customers at the former MetroPCS location operated by City Wireless—
20 unless Defendants are enjoined from violating the Dealer Agreement. City Wireless agreed in
21 the Dealer Agreement that violation of the non-competition or non-solicitation provisions would
22 result in irreparable harm to MetroPCS.

23 21. MetroPCS has a strong likelihood of success on the merits in this action. The
24 non-competition and non-diversion provisions are narrowly tailored, reasonable, and enforceable
25 under Washington law, which law was chosen by the parties in the Dealer Agreement.
26 Defendants are in clear violation of the Dealer Agreement, including particularly the non-
27

1 competition and non-solicitation provisions, in that they are selling competing wireless telephone
2 and wireless internet data services from their former MetroPCS location.

3 22. The balance of equities favors an injunction, because the threat of irreparable
4 harm to MetroPCS outweighs any harm Defendants might suffer if injunctive relief is granted.
5 Indeed, Defendants will suffer no harm if they are compelled merely to comply with the Dealer
6 Agreement. MetroPCS seeks only to prevent what Defendants have no legal right to do, i.e., to
7 violate the Dealer Agreement.

8 23. The injunctive relief that MetroPCS is requesting will not adversely affect the
9 public interest, which weighs in favor of the requested injunction. The term of the non-compete
10 clause at issue in this case is short and the clause is limited in geographic scope. Several
11 important public interests would be furthered by issuing an injunction, including the public
12 interest in enforcing freely negotiated business contracts and protecting companies from unfair
13 competition. Moreover, if such provisions are not enforceable, companies in the position of
14 MetroPCS may be forced to adopt different methods of distribution, which would result in
15 greater costs and lowered efficiency, to the detriment of consumers and the public at large.

16 24. Under Paragraph 16.7 of the Dealer Agreement, the term of the non-compete
17 provision is extended for each day defendants are in breach. Defendants have been selling
18 competing wireless telephone and internet services in violation of this covenant since at least
19 March 30, 2015. As of that date, 142 days remained in the six-month term of the non-compete
20 provision.

21 25. To prevent the irreparable harm demonstrated above, pursuant to Federal Rule of
22 Procedure 65, the Court should issue a permanent injunction to prevent Defendants, their
23 Affiliated Persons and Affiliated Entities; City Wireless's principals, officers, directors,
24 employees, agents, and any successor entity; and all persons acting in concert with or in active
25 participation with them, from violating Dealer Agreement. Defendants should be enjoined from
26 selling competing services at their former MetroPCS location, or at new locations within two
27 miles of their former stores, for the remainder of the six-month term of the relevant provisions.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff MetroPCS prays for judgment as follows:

A. MetroPCS respectfully requests that the Court grant its Motion and enter an Injunction against Defendants City Wireless, Aimen Arrak and Adel Alameri; City Wireless's Affiliated Persons and Affiliated Entities; City Wireless's principals, officers, directors, employees, agents, successor entities; and all persons acting in concert or in active participation with them from, directly or indirectly:

a. Engaging or participating in, or acquiring, managing, operating, controlling or participating in the management, operation or control of any entity that engages in the business of the sale, resale, or distribution of any wireless telephone or wireless internet data service within a two mile radius of City Wireless's former MetroPCS's store locations;

b. Selling, reselling or distributing any wireless telephone or wireless internet data service, within a two mile radius of City Wireless's former MetroPCS's store locations;

c. Requesting any MetroPCS customer to curtail or cancel his or her business with MetroPCS; and

d. Otherwise soliciting, diverting or attempting to divert any such MetroPCS customer from patronizing MetroPCS

B. That the injunction be immediately effective and remain in effect until a date that reflects the remainder of the six month term of the relevant provisions;

C. That no bond or other security be required; and

D. For such other relief as the Court deems just and proper.

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1 DATED this 15th day of May, 2015.

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